

Adm.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JUN 04 2013

OFFICE OF
MANAGING DIRECTOR

Dan J. Alpert, Esq.
The Law Office of Dan J. Alpert
2120 N. 21st Road
Arlington, VA 22201

Re: Waiver and Refund of Regulatory Fee
(NCE FM Translator) (47 C.F.R. §§ 1.1160(a),
1.1162(e) & (g), 73.501, *et seq.*)
Licensee/Applicant: Media One Communications,
Inc.
Station: W295AP
Fee: Fiscal Year (FY) 2012 Regulatory Fee
Date Request Filed: Sep. 14, 2012
Date Regulatory Fee Paid: Sep. 13, 2012
Fee Control No.: RROG-12-00014725
/PGC2200469
Regulatory Fee Amount: \$385.00

Dear Mr. Alpert:

This responds to Licensee's *Request*¹ for waiver and refund of \$385.00 paid for the required Fiscal Year (FY) 2012 regulatory fee.² For the reasons stated herein, we deny Licensee's *Request*.

As set forth in 47 C.F.R. § 1.1160(a)(1), "[r]egulatory fees will be refunded, upon request ... [w]hen no regulatory fee is required or an excessive fee has been paid. In the case of an overpayment, the refund amount will be based on the ... licensees' entire submission."

Our records show that Licensee paid the FY 2012 regulatory fee, and thereafter asserted in its *Request* that "Licensees of NCE [Noncommercial educational] stations are exempt from payment of Annual Regulatory Fees. In the case [of] FM translators, an FM translator that designates a full-service NCE station as its 'primary station; is considered to be an 'NCE FM Translator.'"³ Licensee added, "as of October 1, 2011 and at the time Annual Regulatory Fees

¹ Letter from Dan J. Alpert, 2120 N. 21st Rd., Arlington, VA 22201 to Managing Director, FCC, 445 12th St. S.W., Washington, DC 20554 (Sep. 14, 2012) (*Request*).

² In The Matter Of Assessment And Collection Of Regulatory Fees For Fiscal Year 2012, *Report and Order*, 27 FCC Rcd 8390, 8398 (2012) ("Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2011.").

³ *Request*.

were due, the Primary Station of Station W295AP has been designated as NCE station WBHY-FM."⁴ Without more, these assertions do not establish that Licensee is exempt from the fee and that it is entitled to a refund.

Although Licensee did not refer to our rule at 47 C.F.R. § 1.1162, it appears to base its requested relief on that provision.⁵ Under that rule the Commission grants an exemption from paying the regulatory fee to a NCE licensee in the FM or TV services, as well as AM licensees operating in accordance with 47 C.F.R. § 73.503. In this case, Licensee provided no evidence that it falls within that exemption. Rather, it only asserted that it should be "considered to be an 'NCE FM Translator,'" and on that ground exempt from paying the fee and entitled to a refund of the fee paid.⁶

On that brief claim, we turn to whether Licensee has established an exemption either under 47 C.F.R. § 1.1162(g) on the ground that it provides or proposes to provide "NCE or instructional service" or 47 C.F.R. § 1.1162(g)(1) - (3) that Licensee qualifies under one of the described circumstances. Licensee missed the mark. Specifically, Licensee is not a NCE station within the licensing requirements set forth at 47 C.F.R. § 73.503. Moreover, Licensee failed to present any evidence to support its assertions that it is a "NCE FM Translator." Finally, Licensee's brief assertions do not demonstrate that under § 1.1162(g)(1) - (3) Licensee is (1) "an organization that, like the Public Broadcasting Service or National Public Radio, receiv[ing] funding ... through the Public Broadcasting Fund," (2) a "translator ... proposing to operate an NCE service who, after grant, provides proof that it has received funding for the construction of

⁴ *Id.*

⁵ 47 C.F.R. § 1.1162, provides, in part:

(e) Applicants, permittees or licensees of noncommercial educational (NCE) broadcast stations in the FM or TV services, as well as AM applicants, permittees or licensees operating in accordance with § 73.503 of this chapter.

* * *

(g) Other applicants, permittees or licensees providing, or proposing to provide, a NCE or instructional service, but not qualifying under paragraph (e) of this section, may be exempt from regulatory fees, or be entitled to a refund, in the following circumstances:

(1) The applicant, permittee or licensee is an organization that, like the Public Broadcasting Service or National Public Radio, receives funding directly or indirectly through the Public Broadcasting Fund, 47 U.S.C. 396(k), distributed by the Corporation for Public Broadcasting, where the authorization requested will be used in conjunction with the organization on an NCE basis;

(2) An applicant, permittee or licensee of a translator or low power television station operating or proposing to operate an NCE service who, after grant, provides proof that it has received funding for the construction of the station through the National Telecommunications and Information Administration (NTIA) or other showings as required by the Commission; or

(3) An applicant, permittee, or licensee provided a fee refund under § 1.1160 and operating as an NCE station, is exempt from fees for broadcast auxiliary stations (subparts D, E, F, and G of part 74 of this chapter) or stations in the wireless radio, common carrier, or international services, where such authorization is to be used in conjunction with the NCE translator or low power station.

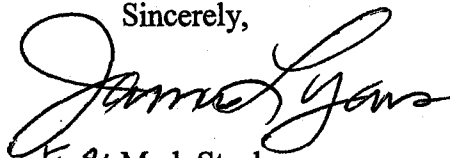
⁶ *Request.*

the station through the National Telecommunications and Information Administration,” or (3) the recipient of a “fee refund under § 1.1160 and operating as an NCE station [under 47 C.F.R. § 73.503], is exempt from fees [as set forth in] subparts D, E, F, and G of part 74 ... where such authorization is to be used in conjunction with the NCE translator”⁷ Licensee failed to provide evidence that it receives the required funding, and Licensee provided no evidence the Commission provided a fee refund and that Licensee is operating as an NCE station under § 73.503, which extends specifically to “a nonprofit educational organization and upon a showing that the station will be used for the advancement of an educational program.”⁸ Rather than falling within the confines of a NCE, it appears that Licensee is a “for profit corporation,” that it operates the translator on a non-qualifying channel, *i.e.*, Channel 295,⁹ and the translator does not operate under the relevant subparts.¹⁰

Licensee failed to show it is a NCE licensee as set forth at § 73.503, and it failed to demonstrate it should be exempt from the fee under any one of the specific conditions set forth at § 1.1162(g)(1)-(3). Licensee bears the burden of establishing its entitlement to a refund,¹¹ and having failed to do so, we deny the *Request*.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,


For: Mark Stephens
Chief Financial Officer

⁷ *Id.*

⁸ 47 C.F.R. § 73.503(a).

⁹ See 47 C.F.R. § 73.501(a).

¹⁰ See *e.g.*, FCC 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, BPFT 20110228AAY (Feb. 25, 2011).

¹¹ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971) (“burden is on the applicant seeking waiver of ... rules to plead specific facts and circumstances which would make the general rule inapplicable”); 47 C.F.R. § 1.1166. See *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) (“petitioner ... has the ‘burden of clarifying its position’ before the agency.”). See also 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

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September 14, 2012

Managing Director
Federal Communications Commission
445 12th St. S.W.
Washington, DC 20554

**Re: 2012 Regulatory Fee
W295AP
Facility No. 150909
FRN: 0004956413**

To Whom This May Concern:

Media One Communications, Inc., by its attorney, hereby requests a waiver of the 2012 Annual Regulatory Fee. In support thereof, the following is stated.

Licensees of NCE stations are exempt from payment of Annual Regulatory Fees. In the case FM translators, an FM translator that designates a full-service NCE station as its "primary station" is considered to be an "NCE FM Translator."

Both as of October 1, 2011 and at the time Annual Regulatory Fees were due, the Primary Station of Station W295AP has been designated as NCE station WBHY-FM.

Media One Communications, Inc. is licensee of Station W295AP. Accordingly, a waiver and refund of the \$385.00 2012 Annual Regulatory Fee that has been paid is appropriate.

WHEREFORE, it respectfully is requested that this request be granted.

Very truly yours,


Dan J. Alpert

Counsel for Media One Communications, Inc.